

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

SAEED BAIDI,

Defendant and Appellant.

B207626

(Los Angeles County  
Super. Ct. No. SA065515)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Katherine Mader and Scott T. Millington, Judges. Affirmed.

John F. Schuck, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Susan  
Sullivan Pithey and Nima Razfar, Deputy Attorneys General, for Plaintiff and  
Respondent.

Following a jury trial, Saeed Baidi was convicted of two attempted murders, shooting at an occupied vehicle, actively participating in a criminal street gang, and being a felon in possession of a firearm. On appeal, he argues the trial court erred in denying his request for substituted counsel and in failing to instruct the jury on the specific intent required for attempted murder. We find no error and affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On August 25, 2007, Baidi shot at John and Joseph Benjamin five times as Baidi and the Benjamin brothers were travelling in cars on Inglewood Boulevard. Baidi was a member of the Venice Shoreline Crips, a criminal street gang. Police Officer Freddy Lilomaiaava opined that the shootings were gang related because they followed multiple confrontations between Black members of the Shoreline Crips and Hispanic members of the Culver City Boys resulting in several killings. It was enough that the Benjamin brothers appeared to be Hispanic and were within the “safety zone” of the Culver City Boys, even though they were neither Hispanic nor members of a gang.

Expended casings were found at the scene of the shooting, and the gun used to commit the shootings was found in Baidi’s apartment along with another expended casing. Baidi stipulated that on August 25, 2007, he was a convicted felon. Baidi’s girlfriend testified that he was with her at the Saddle Ranch bar at the time of the shootings.

Baidi was convicted of two counts of attempted murder (Pen. Code, §§ 664/187, subd. (a)),<sup>1</sup> shooting an occupied motor vehicle (§ 246), being an active participant in a criminal street gang (§ 186.22, subd. (a)), and being a felon in possession of a firearm (§ 12021, subd. (a)(1)). Both attempted murders as well

---

<sup>1</sup> Undesignated statutory citations are to the Penal Code.

as the charge of being a felon in possession of a firearm were found to be crimes committed for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(C)). The jury also found a gun use enhancement (§ 12022.53) applied to both attempted murders and to the shooting of the occupied vehicle. Baidi admitted that he had two prior convictions.

For each count of attempted murder, Baidi was sentenced to consecutive life sentences plus a determinate term of 22 years. His sentence for shooting at an occupied vehicle was stayed. He was sentenced concurrently to four years for being an active participant in a criminal street gang and to seven years for being a felon in possession of a firearm. Baidi timely appealed.

## **DISCUSSION**

### 1. *There Was No Abuse of Discretion in Denying Appellant's Marsden Motion*<sup>2</sup>

Baidi argues that the trial court should have granted his *Marsden* motion to substitute appointed counsel. He claims his relationship with his attorney had irretrievably broken down and he was denied the effective assistance of counsel.

#### a. *Factual Background*

The court granted the defense request to hear a *Marsden* motion. Prior to trial, outside the presence of the prosecutor, Baidi expressed dissatisfaction with his appointed counsel and requested new counsel. Specifically, Baidi informed the court that he believed he was not getting “full representation” because his attorney had not requested a live lineup or filed a motion to suppress evidence, a discovery motion, or a *Pitchess* motion. (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531.) He acknowledged that his attorney had explained to him that there were no

---

<sup>2</sup> (*People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).)

grounds for those motions, but indicated he was not “seeing eye to eye” with his appointed counsel. Baidi also complained that his attorney did not visit him.

The court concluded: “I have not heard anything that makes me believe that . . . the two of you can’t sit down and iron out your differences other than the fact that you don’t want to hear . . . the reasons why she doesn’t want to file the motions that you want to have filed. But you’re not directing your case because you have an attorney who is directing your case.” The court stated that there was “a disagreement about the tactics” and it was up to Baidi to decide whether he wanted to speak to his attorney about the process.

b. *Analysis*

A trial court must grant a motion to replace counsel “if the record clearly shows that the . . . appointed attorney is not providing adequate representation [citation] or that defendant and counsel have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result [citations].” (*People v. Michaels* (2002) 28 Cal.4th 486, 522-523.) ““[I]f a defendant’s claimed lack of trust in, or inability to get along with, an appointed attorney were sufficient to compel appointment of substitute counsel, defendants effectively would have a veto power over any appointment and by a process of elimination could obtain appointment of their preferred attorneys, which is certainly not the law.”” (*Id.* at p. 523.) We review the trial court’s decision for abuse of discretion. (*People v. Cole* (2004) 33 Cal.4th 1158, 1190.)

The denial of Baidi’s motion was not an abuse of discretion. That Baidi and his attorney had tactical disputes does not show an irreconcilable conflict. (*People v. Cole, supra*, 33 Cal.4th at p. 1192 [tactical disagreements “do not by themselves constitute an ‘irreconcilable conflict’”]; see also *People v. Hart* (1999) 20 Cal.4th 546, 604 [“A disagreement concerning tactics is . . . insufficient to compel the discharge of appointed counsel, unless it signals a complete breakdown in the

attorney-client relationship.”].) Baidi did not have the right to present “a defense of his own choosing, but merely the right to an adequate and competent defense.” (*People v. Welch* (1999) 20 Cal.4th 701, 728, overruled on another ground *People v. Blakeley* (2000) 23 Cal.4th 82, 89.) Baidi’s statements that he did not see his attorney as frequently as he desired does not show incompetence. (*People v. Cole, supra*, 33 Cal.4th at p. 1192.) There was no abuse of discretion in denying Baidi’s *Marsden* motion as he failed to show either irreconcilable conflict or inadequate representation. (*People v. Jones* (2003) 29 Cal.4th 1229, 1245.)

2. *The Jury Was Properly Instructed That Attempted Murder Is a Specific Intent Crime*

Attempted murder requires the specific intent to kill and a direct but ineffectual act done towards killing another human being. (*People v. Smith* (2005) 37 Cal.4th 733, 739; *People v. Campos* (2007) 156 Cal.App.4th 1228, 1242.) There is no dispute that the specific intent to kill is an element of attempted murder.

Baidi argues that the court failed to instruct the jury that attempted murder is a specific intent crime. The record belies this claim. The following jury instruction informed the jurors that attempted murder requires a specific intent: “For you to find a person guilty of these crimes or to find the allegations true, that person must not only intentionally commit the prohibited act, but must do so with a specific intent and/or mental state.” The jury was further instructed, under CALCRIM No. 600, that to prove attempted murder, the People must prove “1. The defendant took at least one direct but ineffective step toward killing another person; [¶] AND [¶] 2. The defendant intended to kill that person.” Contrary to Baidi’s argument, the trial court correctly instructed the jury on the elements of attempted murder. (*People v. Rubalcava* (2000) 23 Cal.4th 322, 333-334 [“Trial courts only have a sua sponte duty to instruct on ‘the general principles of law

relevant to and governing the case.’ [Citation.] ‘That obligation includes instructions on all of the elements of a charged offense’ [citation], and on recognized ‘defenses . . . and on the relationship of these defenses to the elements of the charged offense.’ [Citations.]”.)

That CALCRIM No. 600 differs slightly from CALJIC No. 8.66 does not show error. In contrast to CALJIC No. 8.66, CALCRIM No. 600 does not use the phrase “express malice aforethought,” but instead instructs the jury that it must find “the defendant intended to kill” the victim.<sup>3</sup> Express malice aforethought is the “functional equivalent” of intent to kill.<sup>4</sup> (*People v. Swain* (1996) 12 Cal.4th 593, 601; see also *People v. Smith, supra*, 37 Cal.4th at p. 739 [“Intent to unlawfully kill and express malice are, in essence, ‘one and the same.’”].) The jury was instructed that to convict Baidi of attempted murder it had to find that he had the intent to kill.

Finally, there is no merit to Baidi’s argument that the jury “could have construed the word ‘intended’ as meaning ‘willfully’” and could have construed

---

<sup>3</sup> CALJIC No. 8.66 provides: “In order to prove attempted murder, each of the following elements must be proved; [¶] 1. A direct but ineffectual act was done by one person towards killing another human being; and [¶] 2. The person committing the act harbored express malice aforethought, namely, a specific intent to kill unlawfully another human being.”

<sup>4</sup> We agree with the Attorney General that this issue is technically forfeited. With the exception of an instruction on flight, Baidi consented to all of the instructions. He was required to request clarification if he believed the attempted murder instruction was unclear. (*People v. Rodriguez* (1994) 8 Cal.4th 1060, 1192; *People v. Campos, supra*, 156 Cal.App.4th at p. 1236.) We have considered his argument on the merits in order to forestall a claim of ineffective assistance of counsel. (*People v. Lewis* (1990) 50 Cal.3d 262, 282 [considering claim of prosecutorial misconduct not objected to in the trial court to forestall claim of ineffective assistance of counsel].)

“willfully” to require only a general intent. The jury was instructed: ““If you find the defendant guilty of attempted murder under counts 1 and 2, you must then decide whether the People have proved the additional allegation that the attempted murder was done willfully, and with deliberation and premeditation. [¶] The defendant acted willfully if he intended to kill when he acted.”” Thus, the jury was correctly instructed that in order to find defendant willfully committed the attempted murder it was required to find he intended to kill.

### **DISPOSITION**

The judgment is affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.**

MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.